



## **MILPITAS CITY COUNCIL AGENDA TUESDAY, NOVEMBER 18, 2014**

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA  
6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)**



>> Note: Councilmember Armando Gomez will participate by telephone conference  
From 744 Admiral Callaghan Lane, Vallejo, CA 94591 <<

### **SUMMARY OF CONTENTS**

**I. CALL TO ORDER by the Mayor (6:00 p.m.)**

**II. ADJOURN TO CLOSED SESSION**

#### **CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**

Pursuant to California Government Code Section 54957.6

City Negotiators: Tom Williams, Carmen Valdez

Employee Groups: Milpitas Employees Association (MEA), Mid-Management and

Confidential (MidCon), Milpitas Professional and Technical Group (ProTech),

International Association of Fire Fighters (IAFF)

Under Negotiation: Wages, Hours, Benefits and Working Conditions

**III. CLOSED SESSION ANNOUNCEMENT:** Report on any action taken in Closed Session, if required pursuant to Government Code §54957.1, including the vote or abstention of each member present

**IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**

**V. INVOCATION (Mayor Esteves)**

**VI. APPROVAL OF COUNCIL MEETING MINUTES – November 4, 2014**

**VII. SCHEDULE OF MEETINGS – COUNCIL CALENDARS – November and December 2014**

**VIII. PRESENTATION**

Recognition of Milpitas Unified School District Staff for Supporting Inter-School Science Fair

**IX. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

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**X. ANNOUNCEMENTS**

**XI. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**XII. APPROVAL OF AGENDA**

**XIII. CONSENT CALENDAR (Items with asterisks\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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#### **XIV. PUBLIC HEARINGS**

- 1. Conduct a Public Hearing and Adopt a Resolution with Actions for the Approval of Construction of Phase 1 of Senior Assisted Living and Congregate Care Facility including a New 4-story Residential Building with 199 Rental Units (including 10 very low income units) and Associated Site Improvements at 1504-1620 South Main Street (Staff Contact: Shaunn Mendrin, 408-586-3278)**
- 2. Conduct a Public Hearing and Take Actions including a General Plan Amendment and a Zoning Amendment for a Land Use Change from Industrial Park to Multifamily Residential to Construct 144 Residential Units and Associated Site Improvements at 1210 California Circle (Staff Contact: Steve McHarris, 408-586-3273)**

#### **XV. NEW BUSINESS**

- 3. Receive a Report on Milpitas Community Television Inc. and Approve the Staff Recommendation for Going Out to Bid for an Operator (Staff Contact: Mike Luu, 408-586-2706)**
- 4. Accept the City of Milpitas Comprehensive Annual Financial Report, Component Unit Financial Statements and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2014 (Staff Contact: Jane Corpus, 408-586-3125)**
- \* 5. Accept the 2014 Bulletproof Vest Partnership Grant and Appropriate the Funds into the Police Department's Operating Budget (Staff Contact: Charlotte Pang, 408-586-2432)**

#### **XVI. RESOLUTIONS**

- \* 6. Adopt a Resolution Approving the City of Milpitas Adopt-A-Spot Program (Staff Contact: Renee Lorentzen, 408-586-3409)**
- \* 7. Adopt a Resolution Awarding a Contract to Suarez & Munoz Construction, Inc. for McCarthy Boulevard Lighting & Landscape Improvements Phase I, Project No. 3402, and Authorize the Director of Public Works to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 8. Adopt a Resolution Approving the Memorandum of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (Staff Contact: Carmen Valdez, 408-586-3086)**

#### **XVII. AGREEMENTS**

- \* 9. Approve Amendments to Employment Agreements with the City Manager and the City Attorney (Staff Contact: Carmen Valdez, 408-586-3086)**
- \* 10. Approve Sixth Amendment to Agreement with Jarvis, Fay, Doporto & Gibson, LLP, for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 11. Approve Amendment No. 1 to the Agreement with JJR Construction Increasing the Second Year by \$131,000 to the Not-To-Exceed Total of \$281,000 for On-Call Sidewalk, Curb and Gutter Repairs (Staff Contact: Chris Schroeder, 408-586-3161)**

- \* 12. **Approve Amendment No. 1 to the Consultant Agreement with RMC Water and Environment, Inc. for a Three-Year Time Extension for On-Call Water and Sewer System Hydraulic Modeling For Private Jobs and Various Capital Improvement Projects (Staff Contact: Steve Machida, 408-586-3355)**
- \* 13. **Approve Consultant Agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 3701, No. 6106 and No. 7111 in an Amount Not to Exceed \$105,140 (Staff Contact: Steve Machida, 408-586-3355)**
- \* 14. **Approve Consultant Agreement with Circlepoint for California Environmental Quality Act Clearance and Resource Agency Permitting Services for Ames Avenue and Yosemite Drive Bridge Scour Repair for an Amount Not-to-Exceed \$73,753, Project No. 4271 (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 15. **Approve Consultant Agreement with Hohbach-Lewin, Inc., for Bridge Scour Repair Design Services for an Amount Not-to-Exceed \$52,000, Project No. 4271 (Staff Contact: Steve Erickson, 408-586-3301)**
- \* 16. **Approve Consultant Agreement with LTN, Inc. for Soundwall Renovation Design Services for an Amount Not-to-Exceed \$36,900, Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

**XVIII. MEETING OF THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY**

- SA1. Call to Order/Roll by the Mayor/Chair**
- SA2. Approval of Agenda/Consent Calendar**
- \*SA3. **Approve Three Consultant Agreements with Jones Hall for Legal Services, Fieldman, Rolapp & Associates for Financial Advisory Services, and Fraser & Associates for Independent Fiscal Consultant Services for the Issuance of the 2015 Tax Allocation Refunding Bonds (Staff Contact: Emma Karlen, 408-586-3145)**
- SA4. Adjourn Meeting**

**XIX. ADJOURNMENT**

## **KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035  
e-mail: [mogaz@ci.milpitas.ca.gov](mailto:mogaz@ci.milpitas.ca.gov) / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

## **APPLY TO SERVE ON A CITY COMMISSION**

### Seeking Applications for:

Bicycle Pedestrian Advisory Commission  
Recycling and Source Reduction Advisory Commission (Business and MUSD members)  
Telecommunications Commission

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3001 for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings in that facility.*

## AGENDA REPORTS

### **XIV. PUBLIC HEARINGS**

- 1. Conduct a Public Hearing and Adopt Resolution with Actions for the Approval of Construction of Phase 1 of a Senior Assisted Living and Congregate Care Facility including a New Four-story Residential Building with 199 Rental Units (including Ten very low-income units) and Associated Site Improvements at 1504-1620 South Main Street (Staff Contact: Shaunn Mendrin, 408-586-3278)**

**Background:** This project includes the Phase 1 construction of a four-story, 220,187 square foot senior assisted living and congregate care facility with a total of 199 rental units. Ten units will be provided at below market rate and available to very low income senior households over 62 years old. A below-grade parking structure will provide parking for the residents, guests and employees. A Vesting Minor Tentative Map is proposed to create three lots; two lots will be dedicated for public right-of-way and the remaining lot will accommodate construction of the facility. Site improvements include street improvements along South Main Street consistent with the Midtown Specific Plan; construction of two new public streets to be maintained by the applicant; and on-site landscape, utility and infrastructure improvements. A second phase with 190 units is anticipated in the future to the north the project site, but is not part of this application.

The Planning Commission reviewed the proposed project on October 22, 2014 and adopted a resolution recommending that the City Council approve the Site Development Permit, Vesting Minor Tentative Map, and Density Bonus for the 199 unit congregate and senior assisted living development.

Urgency Ordinance (240.2) Exception Request: On August 26, 2014, the City Council adopted Urgency Ordinance No. 240.2 which implemented water use restrictions. Specifically as it relates to this project, the Urgency Ordinance prohibited the construction of new pools (5.03) and the use of potable water for the installation of new landscape unless it is served by Reclaimed Water (5.07). Section 5.08 of the Urgency Ordinance allows the City Council to grant exceptions as needed. The subject site is not located in an area where reclaimed water is available for use and therefore the developer must use potable water for all on-site irrigation. The proposed project is for senior housing and the proposed pool will provide means for low impact exercise for the residents. Since potable water is the only source for irrigation and the pool will provide opportunity for therapy for the residents of the new community, staff supports the exemption request.

Fee Waiver – Park In-Lieu Fees: The applicant is requesting a full waiver of the required park in-lieu fees for the proposed development. The fees were originally calculated using the assigned methodology in the Milpitas Municipal Code, which requires 3.5 acres per thousand persons, based on the density population of 2.49 per household. The calculation takes into account the projected population density of the project based on building type, the fee was subsequently adjusted using a 1.39 per household as used in another senior project (DeVries). This resulted in Park In-Lieu Fee of approximately \$1.33 million. The applicant is requesting that the City Council fully waive the Park In-Lieu Fee in the amount of \$1.33 million pursuant to the City's Development Impact Fee Ordinance since the project serves a more restrictive congregate and assisted living senior population. The applicant has provided a letter, dated October 29, 2014, further describing the rationale for the request (See Attachment E). To summarize, the letter highlights the following points:

- On-site open space and recreation areas are provided on site and the residents will have limited mobility, thus limiting access to public parks.
- Comparable project indicates lower density, high turnover and limited mobility of residents with an average age of 81.

- The proposed project is an “age in place” facility which allows residents to remain in their unit and receive the care that they need as they age.
- Due to the anticipated age and mobility of the residents, there will be very little if any impact to the park system.

Staff concurs with the information the applicant has provided and recommends that the City Council waive the Park In-Lieu Fees. As a precaution, a Condition of Approval has been added to the project stating that if the project were to change from a senior congregate and assisted living development to some other use, the property will be required to pay the parkland fees in effect at that time.

**Public Street Maintenance Agreement:** The applicant will be constructing the extension of Cedar Way and Costa Street and dedicating them as public right of way. The proposed streets include bulb-outs, covered circular drive for drop-off and pick-up and landscape planting strips that do not meet City standards, but will add to the aesthetic of the area. A Public Street Maintenance Agreement requiring the applicant to maintain the street sections and streetscape facilities is needed due to the unique features.

Based on the reasons described in this report and within the Planning Commission staff report, the Planning Commission unanimously recommended the City Council approve the application for development of a 199-unit senior assisted housing and congregate care. The project includes a request for a Minor Tentative Map, Site Development Permit, Density Bonus, Urgency Ordinance Exception and Fee Waiver for Park In-Lieu Fees.

**Fiscal Impact:** Potential impacts to General Fund resulting in the lack of Park In-Lieu fees, however - as identified - the users of the facility will not impact local park facilities.

**Attachments:**

- A: City Council Resolution for approval
- B: 10-22-14 Planning Commission Staff Report
- C: 10-22-14 Planning Commission Clarifications Memo
- D: 10-22-14 Planning Commission Meeting Minutes
- E: Applicant Request for Park Fee Waiver
- F: Adopted Planning Commission Resolution 14-033
- G: Site Development Plans
- H: Vesting Minor Tentative Map
- I: Applicant Statement on Parking Requirements
- J: Project Description Narrative and Density Bonus Concession
- K: Public Street Maintenance Agreement

**Recommendations:**

1. Open the public hearing to receive comments about this development project.
  2. Move to close the public hearing after any comments.
  3. Per Planning Commission’s recommendation, adopt a resolution approving the Vesting Minor Tentative Map No. TP14-0001, Site Development Permit No. SD14-0006, Density Bonus No. DB14-0001, waiver of parkland in-lieu fees, drought restriction exception, and public street maintenance agreement for the construction of Phase 1 of the senior assisted living and congregate care facility including a new four-story residential building with 199 rental units including 10 very low-income units and associated site improvements at 1504-1620 South Main Street in Milpitas, known as South Main Senior Lifestyles.
- 2. Conduct a Public Hearing and Take Actions including a General Plan Amendment and a Zoning Amendment for a Land Use Change from Industrial Park to Multifamily Residential to Construct 144 Residential Units and Associated Site Improvements at 1210 California Circle (Staff Contact: Steve McHarris, 408-586-3273)**

**Background:** The subject property is located on the east side of California Circle, north of Penitencia Creek. On August 21, 2012, the City Council adopted Resolution No. 8220 allowing properties on the east side of California Circle, north of Penitencia Creek, to be considered for re-zoning to residential uses. The property owner/applicant is requesting a General Plan amendment and a zoning amendment to convert the industrial site at 1210 California Circle into a new 144 unit multi-family planned unit development. A detailed project description is provided in the October 22, 2014 Planning Commission staff report. The Planning Commission voted 3 to 2 to recommend to the City Council denial of the General Plan and Zoning Amendments. The Planning Commission Resolution and draft Planning Commission meeting minutes are included in the Council's agenda packet for review.

Staff recommended approval of this project to the Planning Commission, citing City Council support for this area east of California Circle as a transition area from industrial land use to residential land use, consistent with Resolution No. 8220. The City Council recently the Trumark Waterstone residential development to the north of the project site (see item 7 in Attachment I for reference). With the Trumark approval, and the residential neighborhoods existing to the east, conversion to residential would be compatible with these surrounding land uses. It is anticipated that the adjacent BAPS site to the north of the subject property may also request conversion to residential land use in the future, providing a contiguous residential community. The applicant has worked with staff to develop a superior residential project with added public benefit.

### **Project Analysis**

The applicant's request for a General Plan and Zoning designation of multi-family residential is consistent with several General Plan guiding policies. The project will include 144 new townhouse style housing units that will provide new homeownership opportunities in the community, consistent with the General Plan policy to provide for a variety of housing types and densities that meet the needs of individuals and families. The project also provides on-site private park open space, perimeter planting and pedestrian walkways along the northern and eastern project boundaries for enhanced pedestrian circulation in and around the site, consistent with the General Plan policy to create a park-like setting and a greenway system laced throughout all living areas.

The project complies with the R-3 and other municipal code development standards relating to setbacks, density, parking and open space. The applicant is requesting a Planned Unit Development to allow a 42 feet height limit for the residential buildings where the R-3 establishes a height limit of 35 feet. The code requires 0.72 acres of on-site private recreation open space and 1.08 acres of on-site public park area or payment of park in-lieu fees. All code-required resident and guest parking will be accommodated on site. No parking is required or permitted on adjacent public streets. The proposed plan includes 1.37 acres of private open space and the applicant has agreed to pay the park in-lieu fee rather than provide a public park on-site. As such, the project complies with all applicable code requirements.

The applicant has worked with staff to meet and exceed all site plan and architecture requirements of a Site Development Permit to reflect high quality materials, finishes and articulation through conditions of approval.

The site will be accessed from one driveway at California Circle and Fairview Way. This access provides a future connection to the BAPS property to the north. A secondary emergency vehicle access is provided along the northern portion of the site to California Circle. The project includes several significant off-site improvements including a new decorative crosswalk along California Circle at Fairview, a new decorative crosswalk along the northern portion of California Circle and pavement micro-surfacing the full width of California Circle along the property frontage. The project also includes two new publicly accessible on-site pedestrian walkways along the northern and eastern portion of the site, designed to connect to the creek and BAPS site in the future.

\$250,000 for a City of Milpitas Community Gateway Signage Program to design and construct up to two gateway signs in Milpitas as a public benefit will be included with this development, as outlined in the attached documents.

**Environmental Analysis**

An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared and circulated for public review and comment. The IS/MND concluded that the project will not have a significant impact on the environment with the implementation of mitigation measures.

The traffic analysis concludes the project traffic would not exceed the capacity of the existing circulation system and the change in land use from industrial to residential would decrease the trip generation from the site by 20 trips during the AM peak hour and 10 trips during the PM peak hour, although the daily traffic would increase by 197 trips.

According to the Milpitas Unified School District, the district recently reassigned the subject site and adjacent streets to the Weller Elementary School. This school has capacity to accommodate the new residential units. This information was confirmed with preparation of the Mitigated Negative Declaration in September 2014 and reconfirmed on October 31, 2014 by staff (refer to Attachment H). The project applicant is also required to pay school impact fees to fully mitigate the impact of the project on school facilities.

Based on the reasons described above and within the Planning Commission staff report, staff recommends the City Council adopt the Mitigated Negative Declaration and approve the application to change the land use designation from Industrial Park to Multi-family Residential, approve the Planned Unit Development Permit, approve the Site Development Permit and approve the Major Vesting Tentative Map for the development of 144 townhouse units with associated site improvements.

**Fiscal Impact:** None.

**Attachments:**

- A: City Council Resolution for Approval
- A-1: City Council Resolution for Denial
- A-2: 10-22-14 Planning Commission Resolution of Denial
- B: 10-22-14 Planning Commission Staff Report
- C: 10-22-14 Planning Commission Meeting Minutes
- D: Initial Study and Mitigated Negative Declaration
- E: Project Plans
- F: Comment Letter opposed
- G: Comment Letter opposed
- H: Milpitas Unified School District email
- I: Ordinance No. 38.818 for first reading
- J: Adopted City Council Resolution No. 8220 regarding Amendments to the Land Use & Circulation Elements

**Recommendations:**

1. Open the public hearing to receive comments.
2. Move to close the public hearing after any comments.
3. Adopt a Resolution approving General Plan Amendment No. GP14-0003, Site Development Permit No. SD14-0013, Planned Unit Development No. PD14-0001, and Major Vesting Tentative Map No. TM14-0001 and adoption of the Initial Study and Mitigated Negative Declaration (Environmental Assessment No. EA14-0006).
4. Following a reading of the title by the City Attorney, move to waive the first reading beyond the title of Ordinance No. 38.818 for a zoning map amendment to change land use from Industrial Park to Multi-family Residential for the construction of 144 residential units and associated site improvements at 1210 California Circle.
5. Introduce Ordinance No. 38.818.



## **XV. NEW BUSINESS**

- 3. Receive a Report on Milpitas Community Television Inc. and Approve Staff Recommendation for Going Out to Bid for an Operator (Staff Contact: Mike Luu, 408-586-2706)**

**Background:** In April of 2009, the Council approved an agreement with Milpitas Community Television (MCTV) for the operation of the Milpitas Public Access Channel and studio. The agreement was automatically renewed in April of 2012 for an additional three years. MCTV has been operating Channel 26 in a studio located at City Hall with funding from the City's franchise agreement with Comcast Inc. As part of the agreement, MCTV operates the studio and the City of Milpitas maintains and upgrades the equipment. The current agreement is due to expire in April of 2015. Since the funding source from the franchise agreement with Comcast Inc. is running low, staff recommends going out for bids to obtain an operator and review other options for keeping Channel 26 and the studio operational.

**Recommendation:** Receive report on Milpitas Community Television Channel 26 and approve the staff recommendation to go out for bids bid to obtain an operator for Channel 26 and its television studio.

- 4. Accept the City of Milpitas Comprehensive Annual Financial Report, Component Unit Financial Statements and Other Related Annual Audited Reports for the Fiscal Year Ended June 30, 2014 (Staff Contact: Jane Corpus, 408-586-3125)**

**Background:** The Comprehensive Annual Financial Report (CAFR) of the City of Milpitas, Single Audit Report, Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment, Bicycle/Pedestrian Projects and the Memorandum on Internal Control and Required Communications for the fiscal year ended June 30, 2014 are presented to the City Council for review.

### **Comprehensive Annual Financial Report (CAFR) of the City of Milpitas**

The CAFR presents the operations and financial activity of all of the City's various funds, including the General Fund. It includes an unqualified audit opinion from Maze & Associates, the City's external auditors, that the financial statements present fairly the results of operations for the year ended June 30, 2014, in conformance with Generally Accepted Accounting Principles (GAAP).

### **Single Audit Report**

The Single Audit is required by the Office of Management and Budget Circular A-133 for state and local governments and non-profit organizations that receive Federal Awards. The report did not disclose any material weaknesses or significant deficiencies on the internal control over the major federal award programs.

### **Agreed Upon Procedures Report on Compliance with the Appropriations Limit Increment**

This report shows the auditor applied specific procedures to validate the City's Appropriations Limit calculations.

### **Bicycle/Pedestrian Projects Financial Statements**

The Bicycle/Pedestrian Projects Financial Statements includes Bicycle/Pedestrian Projects that were developed using Transportation Development Act (TDA) grants. The auditor issued an unqualified opinion on these statements.

### **Memorandum on Internal Control and Required Communications**

Under generally accepted auditing standards, our auditors are encouraged to report certain matters regarding the City's internal control structure. The City's auditors have provided such a report in their Memorandum on Internal Control and Required Communications ("Management

Letter”) for the Year Ended June 30, 2014. This report includes management response to the auditor’s recommendations on monitoring developer fees classification, compliance with CAL-Card manual, improving cash collection procedures and developing a procedure to comply with reporting requirements for the Housing Successor. It should be noted that the auditors do not view any of their comments as material weaknesses or significant deficiencies on the City’s internal control structure.

**Fiscal Impact:** None.

**Attachments:**

- A. Comprehensive Annual Financial Report for FY 2013-14
- B. Single Audit Report for FY 2013-14
- C. Agreed Upon Procedures report on Compliance with the Appropriations Limit Increment
- D. Bicycle/Pedestrian Projects Financial Report for FY 2013-14
- E. Memorandum on Internal Control and Required Communications for FY 2013-14

**Recommendation:** Accept the City’s Comprehensive Annual Financial Report and other related Annual Audited Reports for the fiscal year ended June 30, 2014.

- \* 5. **Accept the 2014 Bulletproof Vest Partnership Grant and Appropriate the Funds into the Police Department’s Operating Budget (Staff Contact: Charlotte Pang, 408-586-2432)**

**Background:** The United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance allocated a Bulletproof Vest Partnership (BVP) grant in the amount of \$8,423.61 to the Milpitas Police Department towards the purchase of ballistic vests. The grant will reimburse the City of Milpitas for 50% of the cost of each ballistic vest purchased by the Police Department after April 1, 2014. The grant funds must be utilized by August 31, 2016.

**Fiscal Impact:** None. The City’s matching funds are already budgeted in the Police Department’s supplies account.

**Recommendation:** Accept the 2014 Bulletproof Vest Partnership (BVP) grant and approve an appropriation in the amount of \$8,423.61 into the Police Department’s operating budget.

## **XVI. RESOLUTIONS**

- \* 6. **Adopt a Resolution Approving the City of Milpitas Adopt-A-Spot Program (Staff Contact: Renee Lorentzen, 408-586-3409)**

**Background:** The City of Milpitas’ previous Adopt-A-Park Program, implemented in the 1990s, consists of outdated program guidelines and standard operating procedures. In response to a renewed community interest and increased City open space, staff has updated the program and its supporting materials as the “Adopt-A-Spot” program. In this program, the community can participate in enhancing the conditions and usability of Milpitas’ open space and parks and to further enhance the community landscape, all in an effort to beautify the community.

Interested organizations will work with the City’s Recreation Services and Public Works staff to identify park or open space area in need of assistance and develop a plan for organization volunteers to conduct litter removal, graffiti removal, vegetation control and/or tree and shrub planting in that area for up to one year. Adopt-A-Spot organizations will be recognized at a City Council meeting and potentially with a sign at the adopted area.

The Parks, Recreation and Cultural Resources Commission reviewed the new Adopt-A-Spot Program outline and materials on November 3, 2014 and voted unanimously to recommend final adoption and approval by the City Council.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution approving the updated Adopt-A-Spot Program for partnership with community organizations for the enhancement and beautification of community parks and open spaces.

- \* 7. **Adopt a Resolution Awarding a Contract to Suarez & Munoz Construction, Inc. for McCarthy Boulevard Lighting & Landscape Improvements Phase I, Project No. 3402, and Authorize Director of Public Works to Execute Contract Change Orders (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** On June 17, 2014, the City Council approved the project plans and specifications and authorized the advertisement for construction bid proposals for the McCarthy Boulevard Lighting & Landscape Improvements Phase I Project, which provides for the rehabilitation of portions of the irrigation and lighting systems, landscaping, and corrects deficiencies to comply with current regulations at the intersection of South Ranch Drive and McCarthy Boulevard and the northern monument sign location on McCarthy Boulevard near the City limits. The Engineer's Estimate for the base bid project work was \$300,000.

The project was advertised and three sealed bid proposals were received on October 30, 2014. Bid proposals ranged from \$317,710.00 to \$547,512.00, and the lowest responsible base bid was submitted by Suarez & Munoz Construction, Inc. in the amount of \$317,710. No protest was received.

The bid package included one add alternate item for consideration of submitted pricing after bid opening. Staff recommends awarding the package with this item for a not-to-exceed amount of \$17,000, which was below the \$20,000 Engineer's Estimate for this add alternate item. The add alternate item will provide for the removal of existing decomposed granite paving at the southeast corner of the intersection of South Ranch Drive and McCarthy Boulevard and install new concrete sidewalk. Awarding the project base bid with the recommended alternate item brings the total construction contract to \$334,710, which is within the project's cost plan and budget and no additional budget appropriation is required.

As was previously approved for the successful completion of recent projects with tight completion schedules, staff is requesting the use of the same change order policy. This policy allows for the timely completion of the McCarthy Boulevard Lighting & Landscape Improvements Phase I Project, while addressing the need to respond swiftly to construction conditions and approving necessary change orders, in order to limit potential claims or risk to the City. The construction contingency established for this project is \$52,000, approximately 15% of the total contract value, and the change order authority would not exceed this amount and would not require additional appropriation.

**California Environmental Quality Act:** This project is categorically exempt under Section 15301 of the CEQA guidelines for repair or restoration of existing facilities.

**Fiscal Impact:** None. Sufficient funds are available in the project budgets.

**Recommendations:** Adopt a resolution:

1. Awarding a construction contract to Suarez & Munoz Construction, Inc. and authorizing the City Manager to execute the contract for the McCarthy Boulevard Lighting & Landscape Improvements Phase I, Project No. 3402, in the amount of \$334,710.00.
  2. Authorize the Director of Public Works to negotiate and execute change orders for McCarthy Boulevard Lighting & Landscape Improvements Project, in the cumulative amount not to exceed \$52,000.
- \* 8. **Adopt a Resolution Approving the Memorandum of Understanding Between the City of Milpitas and the Milpitas Police Officers Association (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** The most recent Memorandum of Understanding with the Milpitas Police Officers Association will expire on December 31, 2014. City representatives and representatives from the Milpitas Police Officers Association met and conferred in good faith to negotiate a new contract. Agreement has been reached with a new successor Memorandum of Understanding with effective dates of January 1, 2015 to December 31, 2016, which is included in the City Council's agenda packet.

**Fiscal Impact:** Year One – \$627,203  
Year Two - \$1,276,357

**Recommendation:** Adopt a resolution approving the Memorandum of Understanding with the Milpitas Police Officers Association (POA) covering the period of January 1, 2015 through December 31, 2016.

## **XVII. AGREEMENTS**

- \* **9. Approve Amendments to Employment Agreements with the City Manager and the City Attorney (Staff Contact: Carmen Valdez, 408-586-3086)**

**Background:** On November 4, 2014, the City Council in Closed Session considered amendments to the terms of City Manager Tom Williams' and City Attorney Michael Ogaz' employment agreements as provided on the current Amendments (copies are included in the Council's agenda packet).

**Recommendation:** Approve amendments to the employment agreements with City Manager Thomas C. Williams and City Attorney Michael J. Ogaz.

- \* **10. Approve Sixth Amendment to Agreement with Jarvis, Fay, Doporto & Gibson, LLP, for Legal Services (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** This law firm has been handling the City's appeal regarding the CEQA challenge to the permit allowing expansion of the Newby Island Landfill to double the height and allowing continuing landfill activities. As there are still appellate oral arguments and other legal services required in handling the matter, it is necessary to add \$25,000 to the firm's agreement amount.

**Fiscal Impact:** None. Amount of Amendment is within department budget for outside counsel.

**Recommendation:** Approve the sixth Amendment to the agreement with Jarvis, Fay, Doporto & Gibson, LLP, to add \$25,000 for additional legal services.

- \* **11. Approve Amendment No. 1 to the Agreement with JJR Construction Increasing the Second Year by \$131,000 to the Not-To-Exceed Total of \$281,000 for On-Call Sidewalk, Curb and Gutter Repairs (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On March 20, 2014, the City awarded a competitively bid contract to JJR Construction, a California corporation, for on-call repairs to sidewalks, curbs and gutters City wide for the not-to-exceed amount of \$150,000 per year for a five year term. Over the last several months, repairs have been conducted by the contractor at 17 locations where utility breaks occurred, requiring the removal of portions of damaged sidewalk and driveway apron, and installation of new concrete totaling \$21,285. In addition, there were sidewalk repairs relating to tripping hazards in high pedestrian areas in the amount of \$69,111 and staff anticipates another \$60,000 of required repairs relating to tripping hazards, largely due to City tree roots, in the near future. The additional work described above requires an amendment to the existing agreement from \$150,000 to \$281,000 for the period of March 21, 2014 to March 20, 2015.

**Fiscal Impact:** Additional \$131,000. Sufficient funds are available in the CIP No. 4275 – Street Resurfacing Project 2015 budget.

**Recommendation:** Approve Amendment No. 1 to the agreement with JJR Construction increasing the amount of the agreement from \$150,000 to the not-to-exceed total amount of \$281,000, for on-call sidewalk, curb, and gutter repairs for the period of March 21, 2014 to March 20, 2015.

- \* 12. **Approve Amendment No. 1 to the Consultant Agreement with RMC Water and Environment, Inc. for a Three-Year Time Extension for On-Call Water and Sewer System Hydraulic Modeling For Private Jobs and Various Capital Improvement Projects (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** RMC Water and Environment, Inc. prepared the City's water and sewer system master plans and, as part of this work, developed the hydraulic models for these systems. On December 6, 2011, the City Council approved a consultant agreement with RMC in the amount of \$200,000 to perform various water and sewer system hydraulic modeling scenarios, on an on-call basis, to evaluate the potential impact of various development proposals on the system's capacity. Modeling is a useful tool for assessing how new utility connections will impact the existing system and identifying any short-term impacts when pipelines are temporarily taken out of service. The current agreement will expire on December 31, 2014. The City's need for hydraulic modeling support remains strong due to the current level of development interest, infrastructure replacement, and the proposed utility relocations due to the BART construction. The proposed amendment allows for future on-call hydraulic water and sewer modeling on a project basis, as authorized by City staff. The scope of work also includes developing a recycled water model and training for City staff to conduct modeling work in the future. The proposed amendment term is three years for as-needed developer-reimbursable work for City utility operations modeling.

**California Environmental Quality Act:** The ordinance is exempt from CEQA as there will be no physical change to the environment.

**Fiscal Impact:** None. Funds for the development project work will be reimbursed by developers through their private jobs accounts. There are sufficient funds in the Capital Improvement Projects for City utility operations modeling work.

**Recommendation:** Approve Amendment No. 1 to the consultant agreement with RMC Water and Environment, Inc. extending the term from December 31, 2014 to December 31, 2017, for on-call Water and Sewer System Hydraulic Modeling for Private Jobs and various Capital Improvement Projects.

- \* 13. **Approve Consultant Agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 3701, No. 6106 and No. 7111 in an Amount Not to Exceed \$105,140 (Staff Contact: Steve Machida, 408-586-3355)**

**Background:** The City's Financial Utility Master Plan (FUMP) was developed in 2003 to address significant financial issues facing the City's water, sewer, and storm utilities. The work included three key elements: long-term water and sewer rate strategy, connection fee review, and discussion on developing a revenue stream for storm drain system operations and capital requirements. The FUMP is based on several assumptions, including wholesale rate projections, water consumption estimates, growth, and infrastructure replacement. The assumptions for the near-term years are more reliable than assumptions for later years.

The following information has substantial impacts on the City's utilities:

- The San Francisco Public Utility Commission's multi-year \$4.6 billion Seismic Reliability Program is near completion.
- The Santa Clara Valley Water District is planning several capital improvements.

- The South Bay Water Recycling Program is striving to achieve cost-recovery through increased revenues and decreased expenses.
- Water consumption and growth estimates have been affected by the economic downturn and planned higher densities in the Transit Area Specific Plan.
- The City of San Jose is initiating a \$2.2 billion rehabilitation program for the regional wastewater treatment plant.
- The City has increased funding for infrastructure replacement based upon the Water System Seismic Improvement Program and increasing number of major utility line failures.
- The recently adopted Storm Drain Master Plan Update identified both substantial aging infrastructure and increasing operational costs, due to regulatory requirements, and recommended the City develop a dedicated revenue stream rather than rely on availability of the General Fund.

Based on the new conditions and information, the City Council on March 18, 2014 approved the connection fee review by Bartle Wells Associates. The additional tasks, a 20-year strategic plan for water and sewer rates and storm drain rate review and financial plan, are now ready to commence. Staff negotiated a scope and fee for these services not to exceed \$105,140.

**California Environmental Quality Act:** The Agreement is exempt from CEQA as there will be no physical change to the environment.

**Fiscal Impact:** None. There is sufficient funding in the projects' budgets.

**Recommendation:** Approve a consultant agreement with Bartle Wells Associates for the Financial Utility Master Plan Update, Projects No. 3701, No. 6106 and No. 7111 in an amount not to exceed \$105,140.

- \* **14. Approve Consultant Agreement with Circlepoint for California Environmental Quality Act Clearance and Resource Agency Permitting Services for Ames Avenue and Yosemite Drive Bridge Scour Repair for an Amount Not-to-Exceed \$73,753, Project No. 4271 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The repair and improvement of City-owned bridges, Project No. 4271, is included in the City's 5-year Capital Improvement Program. The City-owned Ames Avenue and Yosemite Drive bridges over Berryessa Creek suffer from severe scour at their supporting abutments. Repair at the abutments to reestablish the channel for abutment protection is required, and the placement of armoring materials is required to resist future localized scour. The firm of Circlepoint has been selected through a competitive process to provide the required California Environmental Quality Act (CEQA) clearance and Resource Agency studies and permitting for construction within Berryessa Creek. Staff negotiated a scope and fee with Circlepoint for the environmental clearance and permitting services not to exceed \$73,753.

**Fiscal Impact:** None. Sufficient funds are available in the project budget for these services, however additional funding will be required to award a contract to construct the repairs.

**Recommendation:** Approve a consultant agreement with Circlepoint in the not-to-exceed amount of \$73,753, and for a term from November 18, 2014 to November 18, 2015 for CEQA clearance and bridge scour repair environment and permitting services, Project No. 4271.

- \* **15. Approve Consultant Agreement with Hohbach-Lewin, Inc., for Bridge Scour Repair Design Services for an Amount Not-to-Exceed \$52,000, Project No. 4271 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** Repair and improvement of City-owned bridges, Project No. 4271, is included in the City's 5-year Capital Improvement Program. City-owned Ames Avenue and Yosemite Drive bridges over Berryessa Creek suffer from severe scour at their supporting abutments. Repair at

the abutments to reestablish the channel for abutment protection is required, and the placement of armoring materials is required to resist future localized scour. The firm of Hohbach-Lewin has been selected to provide the design services. Staff negotiated a scope and fee with that firm for design services not to exceed \$52,000.

**Fiscal Impact:** None. Sufficient funds are available in the project budgets for these design services. Additional funding will be required to award the project to construct the repairs.

**Recommendation:** Approve a consultant agreement with Hohbach-Lewin in the not-to-exceed amount of \$52,000, and for a term from November 18, 2014 to November 18, 2015 for bridge scour repair design services, Project No. 4271.

- \* **16. Approve Consultant Agreement with LTN, Inc. for Soundwall Renovation Design Services for an Amount Not-to-Exceed \$36,900, Project No. 4267 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** Repair and renovation of City-owned soundwalls Project No. 4267 is included in the City's 5-year Capital Improvement Program. Many of the City-owned walls were installed over thirty years ago and have deteriorated and require structural repairs to prevent further decay or collapse. Repairs to the walls on Del Rio Court and along the south side of Jacklin Road at Hillview Drive were selected for this project phase, due to the severity of the decay. LTN, Inc. has been selected to provide the design of the repairs and stabilization for these wall segments. Staff negotiated a scope and fee for the services not to exceed \$36,900.

**Fiscal Impact:** None. Sufficient funds are available in the project budgets for these design services. Additional funding may be required to award a project for construction of the wall repairs.

**Recommendation:** Approve a consultant agreement with LTN, Inc. for the not-to-exceed amount of \$36,900, and for a term from November 18, 2014 to November 18, 2015 for soundwall renovation design services, Project No. 4267.

## **XVIII. MEETING OF THE SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY**

- \***SA3. Approve Three Consultant Agreements with Jones Hall for Legal Services, Fieldman Rolapp and Associates for Financial Advisory Services, and Fraser & Associates for Independent Fiscal Consultant Services for the Issuance of the 2015 Tax Allocation Refunding Bonds (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** The Milpitas Redevelopment Agency issued its Tax Allocation Bonds in 2003. The Bonds will have its final maturity on September 1, 2032 and have an outstanding principal balance of \$145,990,000. Due to current low interest rate environment, there is advantage and savings to be realized if the Successor Agency refunds (refinances) the Bonds. Any savings from the lower debt service payment as a result of the refunding will benefit all the taxing entities, as there will be more property tax revenue available for distribution. To initiate the refunding of the Bonds, Successor Agency staff put together a team consisting of bond counsel and disclosure counsel, financial advisor, and independent fiscal consultant.

On November 3, 2014, the Oversight Board authorized the Successor Agency to enter into contracts with Jones Hall as the Bond Counsel and Disclosure Counsel, Fieldman, Rolapp & Associates as the Financial Advisor, and Fraser & Associates as the Independent Fiscal Consultant, for the issuance of the 2015 Tax Allocation Refunding Bonds ("2015 Refunding Bonds").

The firm of Jones Hall has served the City and the Redevelopment Agency as bond counsel on a number of successful bond financings in the past. Based on this relationship, staff requested a proposal from the firm. Jones Hall is a firm comprised of 17 attorneys, all of whom practice

exclusively in the area of municipal finance as bond counsel, underwriter's counsel, disclosure counsel, and special tax counsel. It is one of the most active municipal finance firms in the country and is nationally recognized for the staff's expertise on tax exempt financing. For the 2015 Refunding Bonds, Steve Melikian will serve as lead Bond Counsel, with assistance from Andy Hall and Juan Galvin. Chris Lynch will serve as Disclosure Counsel and Dave Walton will serve as Tax Counsel. The legal fees for bond counsel service is \$75,000 and disclosure counsel is \$45,000. There is also an estimated out-of-pocket expense not to exceed \$3,500. The fees and expenses are on a contingent basis. If the financing is not closed, no fees will be paid for the work provided on the financing. Fees are paid out of the refunding bond proceeds as a cost of issuance.

Through a Request for Proposal process, Successor Agency staff selected Fieldman, Rolapp & Associates (FRA) as financial advisor. FRA has extensive experience providing financial advisory services to many California cities and Successor Agencies. Just for the period from September 1, 2012 to present that firm has acted as Financial Advisor on 55 city transactions with a total par size of \$1.6 billion. The fees for financial advisory service are \$63,000 plus out-of-pocket expenses not to exceed \$6,000. Fees and expenses are on a contingent basis. If the financing is not closed, no fees will be paid for the work provided on the financing. Fees are paid out of the refunding bond proceeds as a cost of issuance.

Fraser & Associates has served as the fiscal consultant for the former Redevelopment Agency in the issuance of its 2003 Tax Allocation Bonds and has assisted the Agency on several tax increment revenue issues. The fee for fiscal consulting services is \$25,000 plus an estimated out-of-pocket expense not to exceed \$2,500. The fee is not on a contingent basis although it can be paid out of the refunding bond proceeds as a cost of issuance.

**Fiscal Impact:** None. The service fees and expenses for bond counsel, disclosure counsel, financial advisor and fiscal consultant are paid from the refunding bond proceeds.

**Recommendation:** Approve the following three agreements related to issuance of the 2015 Tax Allocation Refunding Bonds:

1. Agreement with Jones Hall for legal services.
2. Agreement with Fieldman, Rolapp & Associates for financial advisory services.
3. Agreement with Fraser & Associates Inc. for independent fiscal consultant services.

## **XIX. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, DECEMBER 2, 2014**